



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

Matter of: Systron Donner

File: B-230945

Date: July 5, 1988

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### **DIGEST**

Where bidder offers an alternate delivery schedule as permitted by IFB but fails unambiguously to commit the bidder to all required incremental delivery dates, bid is nonresponsive.

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### **DECISION**

Systron Donner protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. DAAB07-88-B-K141, issued by the Department of the Army, Fort Monmouth, New Jersey. The IFB called for 540 accelerometers, which are integral parts of the Blackhawk helicopter automatic flight control system. The Army rejected Systron's bid because it proposed a delivery schedule that the Army determined did not meet its requirements. Systron contends that its proposed delivery schedule exceeded the required delivery requirements. We deny the protest.

The IFB required incremental deliveries beginning not later than 270 and ending 1,050 days after award. The Army rejected Systron's bid as nonresponsive because the bid only indicated that the required 540 items would be delivered within 429 days after date of contract; the proposed delivery schedule did not allow for 4 deliveries totaling 52 end items to New Cumberland Army Depot, 3 deliveries totaling 38 end items to Red River Army Depot, and 3 deliveries totaling 30 end items to Sharpe Army Depot, all 10 deliveries being due between the 270th and the 420th day after date of award. The Army calculates that the proposed delivery schedule improperly allowed for the late delivery of 120 end items, or approximately 22 percent of the total quantity being procured.

Systron argues that its proposed delivery schedule is responsive because the IFB, permitted the offering of an alternate delivery schedule that would meet or exceed the stated delivery requirements, and its offer to complete

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delivery of all 540 units within 429 days after date of contract instead of within the 1,050 days under the IFB delivery schedule obviously met or exceeded the stated requirements. The protester also states that it proposed the alternate delivery schedule with its understanding that the agency had the right to award under either the required delivery schedule or the alternate.

To be responsive, a bid as submitted must comply in all material aspects with the terms of the IFB. Achievement Products, Inc., B-224940, Feb. 6, 1987, 87-1 CPD ¶ 132. Delivery terms are a material requirement and thus a bid that takes exception to the stated delivery schedule is nonresponsive and must be rejected. See Federal Acquisition Regulation § 14.404-2(e); Railway Specialties Corp., B-212535, Oct. 31, 1983, 83-2 CPD ¶ 519.

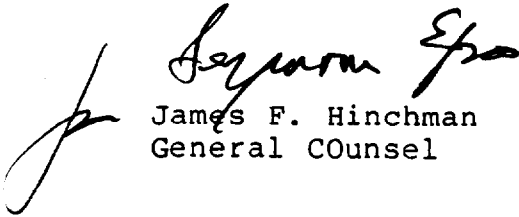
We find that Systron's bid was properly rejected as nonresponsive. Clause F-3 did permit bidders to propose delivery schedules different from the required delivery schedule, but the clause specifically provided that, "offers that propose delivery that will not clearly fall within the applicable required delivery period specified, will be considered nonresponsive and rejected." Systron's proposed delivery schedule provided for early delivery of the entire quantity, but did not reflect the requirement for the first ten incremental deliveries (on six different delivery dates) that would occur prior to Systron's proposed delivery date of 429 days after award. As the agency points out, a failure to offer to comply with incremental delivery requirements renders a bid nonresponsive. See Arvie Mfg. & Supply Co., B-210114, Jan. 4, 1983, 83-1 CPD ¶ 10.

Although Systron argues that it intended for the government to have the right to award it a contract under either the required schedule or its alternate schedule, the bid itself does not indicate such an intent. Clause F-3 does state that "the government reserves the right to award under either the required delivery schedule or the proposed delivery schedule," but goes on to provide for this option only "when an offeror offers an earlier delivery schedule than required above," and states further that "if the offeror proposes no other delivery schedule, the delivery schedule set forth [in] the IFB shall apply." Since Systron's proposed alternate delivery schedule does not offer an earlier delivery schedule (for all items), the option provided for under clause F-3 was not applicable, and the Army properly read the bid as taking exception to the required schedule.

Systron seems to suggest that its bid did not take exception to the incremental delivery requirements but, rather, only moved the final delivery date from 1,050 days to 429 days. If this was Systron's intent, it was not apparent on the face of the bid. By simply offering to deliver all units within 429 days, without referencing the incremental deliveries, Systron offered an alternate delivery schedule that would in no way obligate the firm to meet the incremental delivery requirements. Even if Systron's bid could be read as Systron suggests, it clearly is reasonably subject to the Army's interpretation and thus, at best, is ambiguous and nevertheless nonresponsive. See generally Discount Machinery & Equipment Inc.---Request for Reconsideration, B-223048.2, July 1, 1986, 86-2 CPD ¶ 85.

Systron argues that an award to it based on its low price would be in the government's best interest. We consistently have held, however, that a nonresponsive bid may not be accepted, even where it might result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system. See Canvas & Leather Bag Co., Inc., B-227100, July 24, 1987, 87-2 CPD ¶ 85.

The protest is denied.

  
James F. Hinchman  
General Counsel